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No. 07-

IN THE
Supreme Court of the United States

IN RE: EDDIE A. ALMEJO,

Petitioner.

ON PETITION FOR WRIT OF MANDAMUS, ALTERNATIVELY, FOR A WRIT OF PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

PETITION FOR WRIT OF MANDAMUS, ALTERNATIVELY WRIT OF PROHIBITION

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QUESTIONS PRESENTED

Whether a Writ of Mandamus in aid of this Court's jurisdiction should issue to the United States Court of Appeals for the Armed Forces to require that Court to review and decide Petitioner's Statement of Issues setting forth Constitutional violations, which are contained in his Supplement in support of his Petition for Grant and which are otherwise barred from review in other forums?

Whether in so doing, all other Statement of Issues should be reviewed to do complete justice to Petitioner in aid of this Court's jurisdiction on further review, since the issue of whether he has to register as a sex offender was barred by paragraph 22 of his pretrial agreement To plead guilty, which was breached by the Convening Authority in not granting clemency?

Whether a Writ of Prohibition should issue to the United States Court of Appeals for the Armed Forces from requiring Petitioner to register as a federal sex offender under implementing Navy Regulation SECNAV Inst.5800.14, when under the laws of the State of Washington Petitioner would not have been charged with a sex offense and therefore would not have to register as a sex offender?

Whether a Writ of Prohibition should issue to the United States Court of Appeals for the Armed Forces from requiring Petitioner to register as a sex offender under implementing Navy regulation when under the laws of the State of Washington Petitioner would not have been charged with a sex offense, thereby would not have

to register as a sex offender, and no Due Process hearing is provided for by or in the said SECNAV Inst.5800.14 before registering him as such?

Whether a Writ of Prohibition should issue to the United States Court of Appeals for the Armed Forces from requiring Petitioner to register as a sex offender when there is no law requiring him to register as a sex offender as is required under implementing Navy regulation SECNAV Inst. 5800.14?

Whether a Writ of Prohibition should issue to the United States Court of Appeals for the Armed Forces from requiring Petitioner to register as a sex offender when both federal officials and State officials point to the other as the jurisdiction which requires Petitioner to register as a sex offender?

Whether a Writ of Prohibition should issue to the United States Court of Appeals for the Armed Forces from discharging Petitioner from the Navy, in order to provide him with jurisdiction in other forums to review his Constitutional claims under habeas corpus jurisdiction and then refer this matter as a Writ of Habeas Corpus to the United States District Court for the Western District of Washington, at Tacoma, to hear and decide?

PARTIES TO THE PROCEEDING

Parties to this proceeding are the Chief Judge of the U. S. Court of Appeals for the Armed Forces, Chief Judge of the Navy/Marine Corps Court of Criminal Appeals, the Secretary of the Navy, and the United States.

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Petitioner respectfully petitions for a Writ of Mandamus, or, alternatively, a Writ of Prohibition[1] to the United States Court of Appeals for the Armed Forces in this case.

OPINIONS BELOW

The decision United States Court of Appeals for the Armed Forces ("CAAF") denying review is unreported. App. A. The decision of the Navy Marine Corps Court of Criminal Appeals ("NMCCA") is also unreported. App. B. The facts, legal pleadings, and sentence is contained in the Record of Trial ("ROT"). The ROT is not otherwise published, but is referred to with page numbers or other references in the sections of this Petition below.

STATEMENT OF JURISDICTION

This Court has jurisdiction of the Petitions of Mandamus and Prohibition under 28 U.S.C. § 1651. Each are cited to separately as to each Writ in the Questions Presented. Each refers to the courts-martial proceeding contained in the ROT, the sentence entered, and the decisions on appeal, and otherwise arise because of companion, collateral, and a material adverse result from that SK2 Almejo bargained for and pled guilty in the courts-martial process and in the subsequent hearing and review, which denied direct review in this Court on a statutory Writ of Certiorari.

A Petition for the statutory Writ of Certiorari is barred by 28 U.S.C. § 1259 and 10 U.S.C. § 867a.

1. A companion petition for a common law Writ of Certiorari is filed concurrently.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Constitution:

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

Statutes:

10 U.S.C. § 467a provides:

> (a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provide in section 1259 of title 28. The Supreme Court may not review by writ of certiorari under this section any action of the Court of Appeals for the Armed Forces in refusing a grant of petition for review.
>
> (b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefore without filing the affidavit required by section 1915(a) of title 28.

10 U.S.C. § 951n provides: Text provided for in Appendix F.

28 U.S.C. § 1259 provides in pertinent part:

> Decisions of the United States Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:
>
> > (3) Cases in which the Court of Appeals for the Armed Forces granted a petition for review.

28 U.S.C. § 1331 provides in pertinent part:

> The District Court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1491 provides in pertinent part:

> (a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any act of Congress or any regulation of an executive department. . . .

28 U.S.C. § 1651 provides:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

42 U.S.C. § 17071 provides in pertinent part:

> (b)(7) As provided for in guidelines by the Attorney General, each State shall include in its registration program residents . . . and shall ensure that procedures are in place to accept registration information from—
>
> > (A) residents who . . . were sentenced by court-martial.

RCW 9A.44.130 provides in pertinent part:

> (1) Any adult . . . residing whether or not the person has a fix residence, . . . who has been found to have committed or has been convicted of any sex offense . . . shall register with the county sheriff for the county of the persons residence. . . .

Regulations:

SECNAV Inst. 5800.14 provides: Set forth in Appendix G in full.

STATEMENT OF THE CASE

A. Results Of Trial

SK2 (a Navy designation meaning Storekeeper by specialty and as an enlisted second class petty officer in pay grade E-5) Almejo was charged by general court-martial with committing a violation of Articles and a Specification each of Articles 107 and 134. After mistrial was granted on the Motion of Trial Counsel for allegedly detailing the "wrong member" to the Court, the within Charges were re-filed. A pre-trial agreement (plea agreement) ("PTA") was signed thereafter at a second referred court-martial, and SK2 Almejo pled guilty to each of the above Charge and its Specification. Provision was made in the PTA for relief from sex offender registration in para. 22, because the charge was essentially a family issue, and certainly not a sex offense, calling for sex offender registration status in accordance with the facts and circumstances. Later, the Navy Family Advocacy Program ("FAP") administrator agreed. On December 4, 2004, SK2 Almejo was sentenced under the PTA to six months confinement, but was released from confinement after serving approximately 90 days at the Miramar California Confinement Facility ("Miramar"). Miramar did not place him in its Sexual Offender Treatment Program ("SOTP").

Upon release on May 10, 2005, and while his request for clemency was pending before the Convening Authority ("CA"), Miramar sent Notice to the Kitsap County Sheriff's Office, Port Orchard, Washington, that SK2 Almejo was sentenced for a sex offense and must register as a sex offender. Over SK2 Almejo's objection

based on his PTA, the Prosecutor of Kitsap County, nevertheless, required him to register. She claimed Miramar provided Notice to her in accordance with SECNAV Inst. 5800.14, and she was bound by that. Again and over his objection and involuntarily, SK2 Almejo registered as a level 1 sex offender and remains so registered to this day.

The Prosecutor agreed that if the CA would cancel or rescind any such requirement to register as a sex offender, she would remove him from the registration. Notwithstanding para. 22, the CA refused, contending that this is a "State" issue out of his hands. As a result, Navy Trial Counsel, his supervisor, and the staff judge advocate then reneged on the pretrial agreement as to sex offender registration as set forth in paragraph 22. SK2 Almejo and his family complied with para. 22 beforehand, and the counselor was surprised that Almejo was even charged. Then, SK2 Almejo requested clemency on the basis that he would not have pled guilty if he were to be required to register as a sex offender. The Convening Authority refused to grant clemency notwithstanding according to Para. 22.

SK2 Almejo submitted some 32 pages of clemency to the CA, including the said Prosecutor's letter, for relief from having to register as a sex offender with the State of Washington, but these pages were removed from the Record of Trial ("ROT") at some point prior to oral argument in the NMCCCA, as referred to in paragraph (B) below. The matter is presently under investigation by the Navy to determine who removed these clemency exhibits and under what authority, if any.

B. Actions Of The NMCCCA

About six weeks before oral argument and after all briefing before the NMCCCA, the United States Court of Appeals for the Armed Forces ("CAAF") decided *U.S. v. Miller*, 60 M.J. 452 (C.A.A.F. 2007) requiring defense counsel to provide notice prior to sentence to an accused charged with a sex offense of possible sex offender registration after sentence. The Navy Office of the Judge Advocate General ("OJAG") immediately issued its own Memorandum in the form of "Code 20 Newsmailer 2006-15" addressed to "All Navy and Marine Corps Judge Advocates" dated 01 September 2006 advising all Staff Judge Advocates of *Miller*. Panel Member David A. Wagner was the Military Judge in *Miller*. Neither the Panel nor the Navy Appellate Defense Counsel nor Appellate Government Counsel advised SK2 Almejo or his attorney about *Miller* at or prior to oral argument or subsequently. No attorney in private practice receives OJAG notices directly. Judge Wagner is also under investigation by the Navy over this issue.

At oral argument before the NMCCCA panel, the Panel and Almejo's attorney engaged in a vigorous dispute whether the 32 pages of Clemency matters were provided to the CA. There is no evidence in the ROT that the CA ever saw it. It is reversible error if there is no evidence of review by a CA in the ROT. The Panel insisted that these 32 pages were in the ROT before them and chastised Almejo's attorney for his assertions that they were not. The Panel claimed that SK2 Almejo would eventually receive these 32 copies. None have been subsequently received either by SK2 Almejo, or his attorney, or by Appellate Defense Counsel. The brief of

the Appellate Government Counsel at NMCCCA did not refer to those pages as being there, only that such error was "cured" by Almejo's inclusion of these pages in his Opening Brief to show the error. Moreover, the Panel chastised the undersigned that sex offender registration is *not* part of the process, that para. 22 does not so provide, that such registration argument as to the provision was a "side agreement" not reflected in the PTA, and, finally, that SK2 Almejo pled guilty in any case unaffected in any case by such clemency. SK2 Almejo's attorney argued that sex offender registration is, insofar as the law was at the time, a "regulatory" matter and not a "sentencing matter", and para. 22 was the only way to achieve or avoid having SK2 Almejo register (having had no knowledge of *Miller*, *id.* at that time). The Panel rejected this, did not provide clemency even though it was within its powers and duties to do so, and affirmed.

After oral argument and about two months later, SK2 Almejo's attorney finally obtained from Appellate Defense Counsel, who was not present at said Panel hearing, her copy of the ROT, as she had it, and her record of the ROT confirmed that the 32 pages of clemency were *not* included. As it turned out and after review, there were many additional pages not included. Later, the Appellate Government Counsel brief before CAAF finally agreed and confirmed this.

C. Disposition Of Reconsideration Or Re-Hearing

No re-hearing was requested of NMCCCA since the information from Appellate Defense Counsel was not sent and did not arrive within the time limits for reconsideration.

D. Action By CAAF

The Petition for Grant of Review ("PFR") was timely filed.

After the PFR was filed, SK2 Almejo's attorney became aware of *Miller* through informal conversation. After his review of *Miller*, his attorney deemed that *Miller* should have been briefed and argued before NMCCCA, ethical requirements of notice aside. *Miller* raised several new issues in the interpretation of that case. App. B. SK2 Almejo was denied an informed, relevant review of the issues on appeal, because *Miller* was not raised before NMCCCA. The Navy Office of the Judge Advocate is reviewing Judge Wagner's failure to provide notice of *Miller* at or before the Panel hearing.

A Motion to Remand case to NMCCCA for re-hearing was filed, but CAAF denied the same without discussion.

Thereafter, SK2 Almejo then filed his Supplement to the PFR at CAAF including all the issues, which should have been before NMCCCA. That PFR was denied, and the issues became final for review by this Court.

E. Other Pertinent Information

An Appendix was filed in CAAF by SK2 Almejo. The Appendix filed there is 201 pages long containing the documents referred to and in support of the above. Because of its length, said Appendix is not included, but can be for subsequent review by this Court, and only the pertinent references to that Appendix are contained in this Petition. Also, the ROT is some 400 pages long, including Exhibits, and is also not included for the same reason, but can be.

STATEMENT OF FACTS:

The first court-martial based on the same Charges and Specifications was dismissed after the trial had been well underway. This was done on Motion of Trial Counsel claiming that the "wrong member" had been detailed. The presentation of the Government was not going well in that trial for the Government. Immediately thereafter, Trial Counsel ("TC") offered a considerably reduced sentence offer, referred to in court-martial practice as a pre-trial agreement ("PTA") much like a plea offer in other criminal courts, ostensibly on the verbal authority of the Convening Authority ("CA"). SK2 Almejo renewed his request for this matter to be submitted to the Family Advocacy Group rather than as a criminal charge, as he had done prior to the court-martial to the CA. SK2 Almejo, his wife, and family met personally with the CA in August, 2004, for this purpose. That counter-offer was rejected. After considerable negotiation over this aspect, as well as sexual offender registration, para. 22 was agreed to and incorporated in the Pre-Trial Agreement ("PTA"). The CA approved this PTA without amendment, including para. 22. (ROT 1-5)

The facts and circumstances of the offense need to be addressed. SK2 Almejo and his family were living in Navy family housing near San Diego, California. His wife, Josephine, had three children from a prior marriage, with Melody as the oldest at age 12 then. Josephine was six months pregnant with their own child. She and SK2 Almejo were sleeping in one bedroom, the children sleeping in one bed in another, and parents sleeping in the living room. The three children had fallen out of the bed. Josephine woke up SK2 Almejo and asked him to move the children onto the bed again. She could not because of her pregnancy. She supervised SK2 Almejo in standing close by. Josephine saw no untoward action. *Three* years later at Port Orchard, Washington, Melody, then in serious delinquency trouble, reported that SK2 Almejo had touched her breast. Nothing had occurred toward her by him in between that time. She said one more event happened in Port Orchard, which she later withdrew as a lie. Under this set of facts, SK2 Almejo was charged at a general court-martial. ROT Pretrial Investigation App. 4 & Declaration of J. Byron Holcomb.

After said PTA was signed and approved, no family counseling was ever provided by the Convening Authority as agreed to. SK2 Almejo and his family had completed what they had to do. ROT, Ex. "F". At sentencing, dialog occurred among and between the Military Judge, SK2 Almejo, and Almejo's attorney about whether para. 22 of the PTA was a "deal-buster". At this point in time, sex offender registration was considered "regulatory" and not a part of "criminal sentencing". Such distinction was recognized and set forth indirectly by agreement of all parties in paragraph

22. A PTA under courts-martial rules applies only to the specific criminal sentence, but clemency exists separately from what is set forth in the PTA. Whether *Miller*, *id.*, has changed all of this or how is still left to decide. The regulatory authorities, both federal and State, do not provide for a Due Process hearing prior to registration. That this is so, unfortunately, is absent even when SK2 Almejo was not required to enroll in and undergo the SOTP. To obtain a pre-sentence decision from a prosecutor would not have been possible, because of the uncertain of State jurisdiction over him after release, the uncertain relationship of the law as between federal and State laws, and the mind-set of the CA and his agents. SK2 Almejo was sentenced according to the terms of his PTA. ROT pp. 1-5.

SK2 Almejo filed his initial clemency request on March 22, 2005, with the focus being para. 22. ROT App. Ex. 6. Almejo's attorney returned from a business trip in early May and filed a second and more comprehensive clemency request. ROT App. Ex. 7-22. Coincidentally, SK2 Almejo returned from Miramar at the same time. Miramar gave notice to SK2 Almejo prior to his release that he had to register as a sex offender and to do so in the State of Washington, where he decided to remain. In the meantime, no pays, termed "forfeitures" under the Rules of Court Martial, had been paid to his wife and are still due and owing. The 32 pages of clemency, the formal notice of the SK2 Almejo's requirement to register as sex offender, and the lack of payment of forfeitures were then provided to the CA. ROT App. Ex. 8. The 32 pages referred to above were provided. ROT

pp. 34-55.[2] The CA never saw these 32 pages vital to SK2 Alemjo's request for clemency.

In the meantime and before, SK2 Almejo was doing everything possible to persuade the Prosecutor not to register him as a sex offender. The Prosecutor understood the logic of paragraph 22, but at the same time, she felt bound by the Notice sent by Miramar. She also appreciated that Appellate Ex. "F", as the report of the FAP person, called into question why this matter was even charged. The facts of these Charges and its Specification are a highly technical violation of the Uniform Code of Military Justice, but on the equities these Charges should have been dismissed on clemency and referred to the Navy's FAP instead.

As a mixed factual and legal matter at the time, SK2 Almejo still held Navy status on appellate leave pending results of the CA review and the court appeals at the time he registered as a sex offender. There is no regulation or other authority authorizing the Secretary of the Navy to release his jurisdiction over SK2 Almejo, or to authorize State authorities to regulate a person holding federal status, arising by virtue of a sentence cognizant by the federal authorities.

After denial of review by CAAF, SK2 Almejo was discharged from the Navy on October 22, 2007.

As to the facts post trial, SK2 Almejo relies on the Statement of the Case above in Part B.

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2. The CA has great powers to act on a clemency request, including dismissal of charges, one of the reasons para. 22 was negotiated if Almejo had to register. See, R.C.M. 1105.

REASONS FOR GRANTING THE PETITION

This Court has jurisdiction to review this matter under 28 U.S.C. § 1651 and Rule 20. *See Western Pac. R. Corp., et al, v. Western Pac. R. Co., et al.*, 345 U.S. 247 (1952); *Fortney v. Apfel*, 524 U.S. 266 (1998). As to courts-martial, *see Schlesinger v. Councilman*, 420 U.S. 738 (1975). This Petition is brought in aid of this Court's jurisdiction by reason of the unusual and extraordinary way it arose during the course of appeals in the courts below and the denial by CAAF of the PFR. SK2 Almejo has no other Court with jurisdiction to hear his Constitutional issues in the Questions Presented above.

This is a case of first impression before this or any other court. The Questions Presented have, as their centerpiece, sexual offender registration issues and the right, if any, of federal authorities to provide notice of conviction of a federal sex offense to States of a person sentenced, as in this case under court-martial jurisdiction, and, companion with this, the right, if any, of federal authorities to require the convicted member to register as a sex offender in a State. The Constitutionality of State registration otherwise to sex offenders has been upheld. *Smith v. Doe*, 538 U.S. 84 (2003). This Court has clearly recognized the onus of sexual offender registration. *Lawrence v. Texas*, 539 U.S. 558 (2003). This Court must also be made aware that in the State of Washington there is no reported decision releasing a person from the requirement of sex offender registration, even though it is only supposed to be for a maximum of 10 years. As a practical matter, whether a person must continue to be placed in sex offender registration is left up to the unfettered discretion of county officials. It is not removed automatically.

The within matter illustrates the problems that arise between federal and State laws when left undecided by this court. If there is no Constitutional authorization either for federal officials to give notice of *or* to require a person sentenced as a federal sex offender to register as a sex offender with the States, then this matter has to be sent back to CAAF for further action requested by the Writs of Mandamus or Prohibition to provide jurisdiction in aide of this Court's jurisdiction, then this matter needs to be either decided by this Court, or reversed and remanded to the CAAF below to decide the matter. The factual and legal backdrop and the Constitutional conflicts that arise provide the basis for the jurisdiction of this Court in the manner and under the jurisdictions asserted.

SK2 Almejo recognizes that these Writs are sparingly granted, but there is no other court with jurisdiction to review his Constitutional, or other, claims denied in their entirety by CAAF. This case is an appropriate case to grant these Writs.

CAAF denied SK2 Almejo's PFR despite the serious and substantial issues presented in the Supplement, including Questions of first impression as to Constitutional Issues. See, App. B as to the Issues contained in the Supplement. In so doing and by its action, CAAF denied direct review of the court martial in this Court under 28 U.S.C. § 1259. But, also, in so doing and by its action, the decision of CAAF left no other court other than this Court with jurisdiction under these Writs to review this matter on the Questions Presented.

This Court has *no* jurisdiction to review directly a court-martial when CAAF has denied a PFR. 28 U.S.C. § 1259. This does not necessarily deprive this Court of review, however. The reason is that sex offender issues of notice and to register do *not* arise directly under court-martial jurisdiction, but arise as a result of post-conviction notice and registration requirements found in 42 U.S.C. § 17071(B)(7)(a) and, as to the Navy, under 10 U.S.C. § 951n. App. F, and implementing regulation SECNAV Inst 5800.14b, App. G. The point of law giving rise to these Writs is that the Navy statute and regulation refer to 42 U.S.C. § 17071 as authority for sex offender notice and registration. Moreover, CAAF has decided in *Miller*, *id.*, that defense counsel *must* provide notice to an accused prior to trial of the possibility of post-conviction notice and registration as a sex offender *as part of the court-martial procedure*, but whether indirectly off the record or directly on the record is undecided. Sex offender notice and registration is thereby reviewable in this Court apart from 28 U.S.C. § 1259 leaving only the Writs above as the jurisdiction. Finally, SK2 Almejo's counsel from extended experience in these matters and by instinct *did* provide this notice prior to the time *Miller* had been decided, and that action is in accord with *Miller*. The action of CAAF, App. "A", left no interpretation, as well as leaving SK2 Almejo with no statutory jurisdiction other than these Writs] to review his claims herein.

Almejo now discusses why review is not available in other courts.

Habeas corpus review in District Court is not authorized, since Almejo has been discharged from the

Navy, and no Navy person presently has custody of him. App. E, App. J, App. K, and M.

A Writ of Mandamus is barred also in a federal District Court. These facts are material to this bar. SK2 Almejo plead guilty to the charges, but only on condition that he would not have to register as a sex offender. Para. 22 of his PTA was designed for this purpose as the only possible way to challenge this at the time directly (before *Miller*, *id.*, had been decided, and *Miller* raises as host of issues left unresolved), and he also reserved the right to raise sex offender registration in his PTA as a matter of discretionary clemency to the CA if he was required to register as a sex offender.

NMCCCA and CAAF are the only lower court jurisdictions having the power to review such *discretionary* PTA matters (and whether to interpret para. 22 as discretionary or non-discretionary under the facts of the PTA), such as clemency, and grant relief different from that of the CA. No District Court has jurisdiction to grant clemency within or under any statute of the United States. This is one phase barring mandamus jurisdiction in a District Court.

Then, the Constitutionality of Sex offender registration by *States* has already been decided and upheld, and there is and can be no longer any Constitutional issue of whether a State can register sex offenders. *Smith v. Doe*, *id.*, (2003); *In re Meyer*, 142 Wn.2d 608 (2001); *Russell v Gregoire*, 124 F.3d 1079 (9th Cir. 1997).

However, and referring now to the authority of the federal government to act as to a sex offense under its jurisdiction, the Constitutional issue in this matter is, and remains, whether a federal authority can give notice to the state of a federal sex offense and also require the person after completion of sentence to register with a state. This Constitutional issue was raised in the within matter on the record and arises because of the action, or lack of it, by the CA and by the two reviewing courts within their respective jurisdictions as to discretionary matters. It also arises as well directly by, with reference to, and on their reliance on 42 U.S.C. § 17071(B)(7)(a) as their authority to give notice and to require sex offender registration. CAAF, as the highest military court, denied review to SK2 Almejo as it impacts on him and the reason he pled guilty as a condition, but also on the *Miller* issues of Constitutional law. SK2 Almejo would otherwise be able to raise in a Constitutional issue in a District Court under mandamus, but since CAAF has already *decided* the issue, however indirectly against him, he is and would be barred in that jurisdiction under principles of either *res judicata* or comity as applied to District Courts. *See Councilman, id.*; *Davis v. Marsh*, 876 F.2d 1446 (9th Cir. 1989). This is the second phase barring mandamus jurisdiction.

Finally, District Courts would also be barred from review of discretionary issues as being non-justiciable. (See, argument below as to the same issue). This is the third phase barring mandamus jurisdiction.

The United States Court of Federal Claims ("CFC") would similarly be without jurisdiction. Again, on the record and under the charges SK2 Almejo pled guilty

(even though highly technical and only for the reason of para. 22) and as to the issues as to the legality of the plea itself, that issue had raised and decided directly against Almejo by NMCCCA on that limited issue. App. C. On review and even after *Miller*, *id.*, had been decided, CAAF, nevertheless, denied Almejo's Petition for Review after the Constitutional issues had been raised. App. A. Based on this review, CFC is not a court of equity as to the clemency issues. CFC can only grant monetary relief and then only when there is a statute or regulation "in itself" that authorizes monetary relief. *Testan v. United States*, 424 U.S. 392 (1976). There is none under these facts. Nor does CFC have the power or authority to declare an act of Congress or a regulation of the Military unconstitutional or otherwise in derogation of its authority. *Testan*, *id.* The CFC ordinarily does have the power of reviewing courts-martial on very narrow Constitutional grounds. *United States v. Matias*, 923 F.2d 821 (Fed. Cir. 1990) (see, also, Matias' Petition before this Court in a direct appeal and *cert. denied*, 485 U.S. 968 (1988)). Even so, Almejo has *no* claim for monetary damages either because there is no issue to review directly because he pled guilty after a providency hearing, nor for the acts as occurred before NMCCCA as to absence of the 32 pages of clemency, nor for failure by Judge Wagner to apprise SK2 Almejo of *Miller*, nor the Constitutionality of 42 U.S.C. § 17071(B)(7)(1) standing alone, nor under the same statute as authorizing monetary relief as there is none, nor for discretionary acts of a government agency on their face, as these claims are non-justiciable therein outside of the jurisdiction of the CFC. *United States v. Murphy*, 993 F.2d 872 (Fed.Cir. 1993).

Accordingly and based on the above otherwise available jurisdictions, this Court remains as the *only* jurisdiction as the superior court above CAAF and NMCCA cocxtensive with their jurisdiction or to review their acts under Constitutional challenges under the jurisdiction stated for the reasons stated.

In so doing, SK2 Almejo asks this Honorable Court to focus on *Miller*, id. *Miller* represents a case of first impression as a departure from the ordinary rule that sex offender registration cannot be considered in the courts-martial sentencing court in any fashion, as provided for in sentencing instructions contained in DA PAM 27-9 (followed by all military services). CAAF held that defense counsel must give notice to an accused prior to trial of the possible requirement of sex offender registration if convicted of the offense and after sentence and then made this ruling to operate prospectively. The Navy OJAG immediately put this requirement into effect. App. H. The Navy had for some time in statute and by regulation required notice to be sent to states after the release of a person from confinement and that the member must register. App. F and G. Almejo was sentenced and became considered a sex offender under this set of regulations and confinement orders.

The issues imposed by and growing out of *Miller* vitally need to be interpreted. There is no known case at present interpreting *Miller*. *Almejo* is precisely the case to do so, with precisely reviewable issues having been presented below, with precisely the right set of facts justifying release from sex offender registration, and precisely ripe for review. Either this court should do so directly as the superior reviewing court over CAAF, as

argued above, or the matter should be reversed and remanded by mandamus to CAAF to decide these issues. As a matter of policy, each person charged at court-martial with a sex offense deserves to know whether this onus will remain with him for life, as is the *de facto* requirement in the State of Washington.

SK2 Almejo filed a number of issues before CAAF, Constitutional and otherwise, growing out of or related to *Miller*. App. B. These issues were not presented to NMCCCA, since no one advised SK2 Almejo of *Miller* prior to final decision of that Court. App. C and D. Worse, CAAF denied a Motion to Remand the case to NMCCCA based on *Miller*. Without stated reason, CAAF also denied review of these issues. App. A. This action also precluded a direct Petition for Writ of Certiorari to this Court under 28 U.S.C. § 1259 and 10 U.S.C. § 867. This is an injustice to SK2 Almejo, which is not allowed under our Constitution either by Congressional oversight or omission or intent as represented by 28 U.S.C. § 1259, or which is reviewable generally under the Fifth Amendment Due Process clause by this Court.

The number of members sentenced by court-martial for sex offenses and subject to sex offender registration because of 28 U.S.C. § 17071(B)(7)(a) is unknown, but there has to be thousands over the years. There is no known statistic of members convicted at court-martial for a sex offense who have re-offended, but aside from the lack of logic of this as a reason for sex offender registration generally and unproven as a basis generally, the overwhelming number of court-martial sentences are for family-related sex offenses, which on its face gives reason as unlikely to re-offend, especially after SOTP.

Almejo was placed in Level 1, as the least likely to re-offend, as are almost all others as to family-related offenses.

Military members are almost in total unlike those who are civilians and who hang around playgrounds preying on unknown children, Level 3 offenders if you will. In the usual case, sex offenses in military families are limited number in occurrence, usually once, usually situational, in a high percentage of cases related to alcohol, with everyone in the family having feelings of regret and remorse afterward, usually in a second family situation following re-marriage with a teenage daughter, usually with the wife playing a passive role in allowing the offense to happen, and, just as often, happening at the insistence of the underage victim usually female. In this latter connection and while the military member may have SOTP benefit, the victim and family do not. Then, what usually follows is a divorce, mother goes on welfare, the female victim usually gets pregnant at an early age, father declares bankruptcy, father goes to prison and cannot provide for the family, siblings have no money for education or other reasons, male siblings become perpetrators or become involved in domestic violence, and the cycle continues. If the statistics are to be believed as to the number of projected sex offenders and family members who go without treatment (apart from military persons), the number of such projected sex offenders in the United States alone is staggering with an estimated 250,000,000 in sixty years! There will not be enough prison space to handle all of them. Back to the military and above all, the military services lose top performers in the usual case in addition because of discharge. These are some of the stated reasons for FAP. This is the reason

SK2 Almejo asked the CA for FAP counseling and treatment. No treatment has been provided to Melody by anyone. Para. 22 of the PTA if followed would have done this.

The injustice of sex offender registration to these individuals, who may have a reason or any number of reasons apart from SK2 Almejo's reasons to be exempted from State sex offender laws, is apparent to these members also. No one argues that the acts are justified, even in SK2 Almejo's case where there is a *de minimus* factual basis. All have been found guilty and sentenced. However, they should not be subject to a *de facto* lifetime onus with all the on-going problems that result from this registration both to the member, to his wife, and family. Reviewing all of this is the reason this Court exists

SK2 Almejo now addresses each Question Presented above.

As to the first and second of the Questions Presented above, this Court should issue a Writ of Mandamus to CAAF requiring CAAF to review and decide these Questions. SK2 Almejo's Petition for this Writ is filed in aid of this Court's jurisdiction, in that these Constitutional and other issues when decided would come before this Court directly at a later time under 28 U.S.C. § 1259 and 10 U.S.C. § 867a.

As to the third Question Presented, this Court must take note of the complexities in the interrelation arising between federal and state laws and convictions and sentencing under those laws. SK2 Almejo would not have been charged with a sex offense, or if charged would have

a complete defense, under *State v. Ramirez*, 46 Wn. App. 223 (1986), since at the time of the act he was acting in custodial capacity under the direct supervision of his wife standing there supervising him. He would, therefore, not have had to register as a sex offender in the State of Washington. That the acts occurred in California is irrelevant since he still does have to register as a sex offender in the State of Washington as his residence. In any case, there is no such "custodial" defense available under courts-martial jurisdiction. 10 U.S.C. § 951n. and SECNAV Inst. 5800.14 require a member to register as a sex offender upon release from confinement. Both cite to 42 U.S.C. § 17071(B)(7)(a) as the authority, when said statute does not require registration, but only that the States must "accept" registration. Case authority does exist, in part, to support this Question Presented and the arguments made. *See Fox v. Lappin*, 409 F. Supp.2d 79 (USDC D. Mass. 1996). *Fox* addresses this Question Presented directly by allowing federal authorities to classify a member as a sex offender and then to provide notice to the State, but denies the right of federal authorities to require the person to register. SK2 Almejo challenges *Fox* as to its holding allowing notice to the States, but does cite to *Fox* in support of a prohibition against requiring registration. SK2 Almejo challenges *Fox* as to its notice approval on the ground that allowing such notice is tantamount to requiring registration, if it is left up to the State for such a determination after notice, as it is in the State of Washington. See, App. I. *Ramirez* precludes this.

As the fourth Question Presented, neither 42 U.S.C. § 17071 (B)(7)(a), nor 10 U.S.C. § 951.n, nor SECNAV Inst. 5800.14 provide for a Due Process hearing to

determine whether a member as a federal sex offender is required to register with the State under that State's laws having correlation to the federal sentence and to which the member will move after release from confinement. Again, SK2 Almejo raised a valid objection in the courts below that he would not be required to register as a sex offender if the charge were to be brought in that jurisdiction. SK2 Almejo argues that both these authorities are unconstitutional as overly broad in violation of the Fifth Amendment, Due Process, in not providing for some hearing. Again, this Court must look to *Lawrence*, *id.*, for the onus such registration imposes on a member as well as the lack of any reported decision in the State of Washington excusing sex offender registration, meaning in practical terms a lifetime registration. SK2 Almejo would cite to *Ramirez*, *id.*, at his Due Process hearing to preclude his registration as a sex offender.

As to the fifth Question Presented, and referring to Questions three and four above as closely aligned to this Question, it is different in its focus for application and relief. Since there plainly is no federal *statute* authorizing notice to the States of a federal sex offender and certainly no *statute* requiring SK2 Almejo to register with State authorities as a sex offender, the actual authority for providing notice as to him and to direct his registration is SECNAV Inst. 5800.14 as applied to him. Such regulation is plainly unauthorized under any implementing statute and a violation of the Fifth Amendment, Administrative Due Process, as interpreted.

As to the sixth Question Presented, SK2 Almejo sought to clarify which jurisdiction as between State and federal has the ultimate authority to determine whether a member must register. Each has pointed to the other. App. I & J. Does either the State or federal authorities have the authority, then, as applied and as interpreted by each, to require SK2 Almejo to register as a sex offender when each denies that it has this authority? This is a novel question. Research has disclosed no case authority deciding this on the narrow question of sex offender registration.

As to the seventh Question Presented, this relates to habeas corpus jurisdiction. If this Court were to issue a Writ of Prohibition to CAAF from discharging SK2 Almejo from the Navy until such time as his Constitutional and other issues are decided, then habeas corpus jurisdiction would be available then, as SK2 Almejo would be under the control of the Secretary of the Navy. In doing this, this Court should refer the Constitutional and other related issues to the U. S. District Court for the Western District of Washington, at Tacoma, to hear and decide these habeas corpus issues.

CONCLUSION

For reasons expressed above, the Writ Petitions as set forth above should be granted.

Respectfully submitted,

JAMES BYRON HOLCOMB
Attorney for Petitioner
P.O. Box 10069
Bainbridge Island, WA 98110
(206) 842-8429

APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES, WASHINGTON, D.C. DENYING PETITION DATED OCTOBER 18, 2007

UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES
WASHINGTON, D.C.

USCA Dkt. No. 07-0237/NA
Crim. App. No. 200501051

UNITED STATES,

Appellee

v.

Eddie A. ALMEJO,

Appellant

ORDER DENYING PETITION

On consideration of the petition for grant of review of the decision of the United States Navy-Marine Corps Court of Criminal Appeals and Appellant's motion to provide additional facts to support argument as to issues in the supplement for review, it is by the Court this 18th day of October, 2007,

ORDERED:

That said motion is hereby denied; and,

That said petition be, and the same is hereby denied.

For the Court,

/s/ William A. DeCicco
Clerk of the Court

APPENDIX B — STATEMENT OF ERRORS ASSIGNED FOR REVIEW OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES, WASHINGTON, D.C.

STATEMENT OF ERRORS ASSIGNED FOR REVIEW:

(1) What are the numerous effects of *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006) on the issues of this case as are woven throughout the Statement of Errors Assigned for Review below and not argued before the Navy/Marine Corps Court below because of the reasons set forth below calling for reversal and remand to the Convening Authority for further decision;

(2) Whether there was an incomplete Record of Trial (hereinafter "ROT") upon which the Decision of NMCCCA was based insofar as clemency was raised as set forth in the Appendix[1] at pp. 34-55 calling for reversal and remand to the Convening Authority for further decision;

(3) Whether it was error for the NMCCCA Panel to fail to disclose *Miller* to the Appellant either before or during oral argument as set forth in "Code 20 Newsmailer 2006-15" addressed to "All Navy and Marine

1. The "Appendix" referred to is the Appendix filed in this Court in support of Appellant's Motions in the alternative and denied by this Court. Concomitantly, the reference to the "Declaration of the undersigned" refers to the same as and for factual basis for the arguments made in some Issues herein.

Corps Judge Advocates" dated 01 September 2006 advising all Staff Judge Advocates of *Miller*, as is contained in the Appendix at pp. 10-11, when the Argument made by Appellant was for the essential relief prospectively decided by this Court in *Miller*, but without argument or decision in the NMCCCA Court below and, if so, calling for reversal;

(4) Whether Panel Member Judge David A. Wagner in the NMCCCA below failed to disclose and to recuse himself although he was the Military Judge in *Miller* and whether that failure that would give the appearance of impropriety, demonstrated bias, and raised the specter of pre-judgment of the sex offender issue raised by Appellant in his briefing and, if so, calling for reversal;

(5) Whether the NMCCCA Panel failed to review Appellant's case in light of this Court's decision in *Miller* and failed to determine whether the policies of *Miller* should be applied or not in this case to Appellant calling and if so, calling for reversal;

(6) Whether Appellant Defense Counsel of the Navy/ Marine Corps Appellate Defense group committed error in failing to disclose *Miller* to the Appellant, as her client, at the time of either the decision in *Miller*, or at the time of her receipt of "Code 20 Newsmailer 2006-16" addressed to "All Navy and Marine Corps Judge Advocates" dated 01 September 2006 advising all Staff Judge Advocates of *Miller*, as is contained in the Appendix at pp. 10-11 and, if so, calling for a finding of ineffective assistance of counsel and reversal;

Appendix B

(7) Whether it was error for the NMCCCA Court below to fail to provide clemency to the Appellant since he agreed to plead guilty only if he would *not* have to register as a sex offender, as such understanding was reaffirmed to the undersigned, as set forth in the Declaration of the Undersigned filed with this Court in support of Appellant's Motions in the alternative, and further based on paragraph 22 of the Pretrial Agreement and on the advice of the undersigned that the Appellant would have not have to register as a sex offender because of paragraph 22, and the effect of *Miller* on his pleas accordingly;

(8) Whether the Staff Judge Advocate of the Convening Authority erred:

(a) in misleading the Appellant in stating in his letter of 26 May 2005, p. 2, (See, App. 44-45. Note: not in the ROT) that sex offender registration is a "state matter" without reference to SECNAV Inst. 5800.14, which requires that the Navy notify the State of a sex offense upon the Appellant's release from custody from a military confinement facility and order the member to register; and,

(b) as a related issue, whether there was government misconduct by the Staff Judge Advocate and trial counsel as to the pretrial agreement and clemency for this failure as well as failure to produce the entire ROT to the NMCCCA Court;

Appendix B

(9) What effect does *Miller* have on paragraph (7) above on an Appellant who was advised of such sex offender registration but who was also advised that he did not have to register because of para. 22 of the Pre-trial agreement as it was not a sex offender problem for treatment but a family problem for treatment and calling for such relief as this Court deems appropriate based on other issues herein;

(10) Whether there was error by the Convening Authority in rejecting Appellant's clemency appeals relying on his understanding he would be exempt from sex offender registration as the inducement for him to plead guilty, but the Convening Authority nevertheless ignored this request, disregarded the Appellant's reliance, and did not granting clemency and, if so, calling for reversal;

(11) Whether NMCCCA failed to review properly the clemency requests of Appellant based on all the facts and circumstances and failed to grant clemency and, if so, calling for reversal;

(12) Whether the Convening Authority and NMCCCA below erred in not considering that the State authority had agreed in writing that if Appellant received a decision of the Convening Authority granting clemency as to sex offender registration, the State authority would remove Appellant from the requirement to register as a sex offender (See, App. 103) and, if so, calling for reversal;

Appendix B

(13) Whether NMCCCA failed to reverse the conviction on any or all of the issues above and, if so, calling for reversal;

(14) Whether SECNAV Inst. 5800.14 (and subsequent revisions of said Instruction on the same subject) is unconstitutional or in contravention of federal law in the following respects:

(a) for failing to provide for a hearing on whether a convicted member of the military should be required to register as a sex offender under the law of the State where the member is to be sent, in this case the State of Washington, before notice is sent to that State, and, if so, calling for reversal of the conviction since no such hearing was held, or

(b) if the Constitutional basis for this Instruction and its revisions is derived and is based on court-martial jurisdiction, whether this then is a sentencing provision and not a regulatory provision, as it has been held to be "regulatory" as to States apart from State court criminal sentencing, and, if so, calling for reversal of the conviction for failing to give notice to Appellant by the Court or by Instruction to members that he must register at or before plea, or

(c) when the State disavows responsibility to decide whether sex offender registration is required and the military also disavows that same responsibility, each thereby pointing to the other, whether the said Instruction or any other authority is legally authorized

to require sex offender registration, and, if not, what effect does *Miller* have on such disavowal, or

(d) where the State has said in writing that it will not require sex offender registration unless the military so directs, does any statute or the SECNAV Instruction or any other federal regulation consistent with federal statutory, regulation, or case law authorize the military to so direct, and, if not, should this matter be reversed and remanded for further proceedings as not meeting Constitutional requirements, or

(e) where the military member remains a member of the military and subject to the Secretary's supervisory authority during the course of UCMJ proceedings after release and during appeal, does the State have Constitutional authority under the SECNAV Instruction or any other authority to supervise a military member during this period whose status as a non-military/civilian person has not been finally ordered; and, if not, is the Secretary acting *ultra vires* be ordering a State agency to supervise the member in such status; and, should this matter be reversed and remanded for further proceedings which has the effect of releasing SK2 Almejo from registering as a sex offender;

(15) If *Miller* does or does not address Issue 14(b) above, whether *Miller* is unconstitutional for failing to provide equal protection of laws under the Fifth Amendment to the U.S. Constitution because of its prospective application to require continuing registration for those who have been sentenced without benefit of this advice,

and, if so, should Appellant be required to continue to register and should this be determined after reversal and remand for further proceedings;

(16) Whether sex offender registration as a requirement of or flowing from a military court-martial is unconstitutional because such a requirement has a different jurisdictional base in the U.S. Constitution from the jurisdictional base for convening a court-martial against a military member, and, if so, calling for reversal;

(17) When Appellant would not have been charged as a sex offender under Washington case law, as set forth in *State v. Ramiriz* in the State of Washington, and thereby would not have had to register as a sex offender, what effect does such case law have on notice to Appellant that he must register as a sex offender, and, if required, calling for reversal;

(18) When this matter arose away from a military installation, whether this Court should create exception to *Solario v. United States*, in that State Courts should be the preferred forum to hear cases charging a military member with a sex offense in order to achieve uniformity of laws with regard to sex offense registration;

(19) Given that the first general court-martial of Appellant on the same facts was terminated by declaration of a mistrial as jurisdictional, whether the provisions of R.C.M. 915 are jurisdictional providing the basis for review at any time and whether a hearing should be held to determine whether the mistrial met

the requirements of R.C.M. 915 in the absence of any record of this in the trial court ROT in this matter, and calling for reversal and remand for further proceedings;

(20) Should the Convening Authority referred this matter to the Family Advocacy program under the facts and circumstances of this case and having failed to do so as an abuse of discretion, should this matter be reversed and this relief ordered by this Court.

APPENDIX C — OPINION OF THE U.S. NAVY-MARINE COURT OF CRIMINAL APPEALS, WASHINGTON NAVY YARD, WASHINGTON, D.C. DECIDED NOVEMBER 29, 2006

IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.

BEFORE

D.A. WAGNER R.E. VINCENT E.B. STONE

UNITED STATES

v.

Eddie A. ALMEJO
Storekeeper Second Class (E-5), U.S. Navy

NMCCA 200501051 Decided 29 November 2006

Sentence adjudged 20 December 2004. Military Judge: B.W. MacKenzie. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commander, Navy Region Northwest, Silverdale, WA.

LT AIMEE SOUDERS, JAGC, USN, Appellate Defense Counsel

J.B. HOLCOMB, Civilian Appellate Counsel

LT CRAIG POULSON, JAGC, USN, Appellate Government Counsel

Appendix C

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

The appellant was convicted, pursuant to his pleas, by a military judge sitting as a general court-martial, of making a false official statement and indecent acts upon a child.[1] The military judge sentenced the appellant to confinement for nine months, reduction to pay grade E-3, and a bad-conduct discharge. The convening authority approved the sentence as adjudged, but, pursuant to a pretrial agreement, suspended confinement in excess of six months. The appellant claims, in three assignments of error, that the staff judge advocate's recommendation (SJAR) was defective in that it did not address the legal issues raised in the appellant's submissions under RULE FOR COURTS-MARTIAL 1105, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.); that the convening authority failed to comply with the terms of the pretrial agreement; and that the referral of the charges to a general court-martial was an abuse of the convening authority's discretion.

We have considered the record of trial, the appellant's brief and assignments of error, the Government's response, the appellant's reply and the oral arguments of both parties. We conclude that the findings and sentence are correct in law and fact and

---

1. The offenses violated Articles 107 and 134, Uniform Code of Military Justice, 10 USC §§ 907 and 934.

that no error materially prejudicial to the substantial rights of the appellant was committed. Articles 59(a) and 66(c), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a) and 866(c).

The first assignment of error is frivolous. The civilian trial defense counsel also acted as appellate defense counsel in this case. The appellant's argument with regard to the SJAR is that the civilian trial defense counsel never received the supplemental SJAR dated 20 June 2005. The supplemental SJAR was issued to address the legal matters raised in the appellant's R.C.M. 1105 matters dated 22 March, 23 May, and 29 May 2005 that were not addressed in the original SJAR dated 28 April 2005. The record discloses, however, that the civilian trial defense attorney signed for receipt of the supplemental SJAR on 24 June 2005 and later referenced the supplemental SJAR in his own correspondence of 27 June 2005 to the convening authority.

The second assignment of error is also frivolous. The appellant was the beneficiary of a favorable pretrial agreement. Both the appellant and the civilian trial defense counsel acknowledged, on the record, that there were no other agreements than those contained in the written pretrial agreement. The appellant and his counsel also agreed with the military judge's interpretation of paragraph 22 of the pretrial agreement in that the convening authority incurred no obligation to provide specific counseling as a result of the agreement. The appellant now claims that the plain

language of paragraph 22 required the convening authority to provide family counseling of a specific kind before the appellant was incarcerated following trial. This is plainly a distortion of the facts contained in the record of trial.

The third and final assignment of error is meritless. The appellant waived any issue regarding improper referral of charges by failing to raise the issue prior to the entry of pleas. R.C.M. 905 (b) (1). Additionally, the appellant agreed in his pretrial agreement to waive all motions not deemed nonwaiveable under R.C.M. 707.

The findings of guilty and sentence, as approved by the convening authority, are affirmed.

For the Court

s/ R.H. Troidl
R.H. TROIDL
Clerk of Court

APPENDIX D — ISSUES BEFORE NAVY AND MARINE CORPS COURT OF CRIMINAL APPEALS

I. WHETHER THE RECORD OF TRIAL MUST BE REMANDED TO THE CONVENING AUTHORITY DUE TO THE STAFF JUDGE ADVOCATE'S FAILURE TO ADDRESS THE LEGAL ISSUES RAISED IN THE DEFENSE'S R.C.M. 1105 SUBMISSIONS

II. WHETHER UNDER THE CIRCUMSTANCES OF THE CASE, THE CONVENING AUTHORITY COMPLIED WITH PARAGRAPH 22 OF THE PRETRIAL AGREEMENT:

(A) IN FAILING TO PROVIDE COUNSELING FOR THE FAMILY BEFORE APPELLANT'S SCHEDULED CONFINEMENT WAS TO BEGIN AT A TIME WHEN ALL PERSONS WERE PRESENT FOR SUCH COUNSELING, READY TO ATTEND, AND SUCH WAS APPROVED AND AVAILABLE BY THE FAMILY ADVOCACY PROGRAM COUNSELORS; AND,

(B) IN FAILING TO TAKE APPROPRIATE ACTION TO PROTECT THE ACCUSED FROM HAVING TO REGISTER AS A SEX OFFENDER TO ACCOMPLISH THE INTENDED PURPOSE OF PARAGRAPH 22

Appendix D

III. WHETHER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE, THE CONVENING AUTHORITY ABUSED HIS DISCRETION IN PREFERRAL OF UCMJ CHARGES AND REFERRAL OF THE MATTER FOR TRIAL WHEN THE APPROPRIATE ACTION SHOULD HAVE BEEN TO REFER THE MATTER TO THE FAMILY ADVOCACY PROGRAM FOR ACTION AND TREATMENT AS REQUESTED BY THE ACCUSED PRIOR TO REFERRAL AND BASED ON THE CIRCUMSTANCES AS ADDUCED AT SENTENCE AND ON THE RECORD WHETHER UNDER THE CIRCUMSTANCES OF THE CASE, THE CONVENING AUTHORITY COMPLIED WITH PARAGRAPH 22 OF THE PRETRIAL AGREEMENT:

Conclusion

Declaration of J. Bryon Holcomb and Appendix

Certificate of Service

APPENDIX E — GENERAL COURT-MARTIAL SUPPLEMENTAL ORDER OF THE DEPARTMENT OF THE NAVY DATED OCTOBER 22, 2007

DEPARTMENT OF THE NAVY
NAVY AND MARINE CORPS
APPELLATE LEAVE ACTIVITY
716 SICARD STREET SE ROOM 46
WASHINGTON NAVY YARD DC 20374-5083

IN REPLY REFER TO
OCT 22 2007

GENERAL COURT-MARTIAL SUPPLEMENTAL ORDER NO. 06-1584

In the general court-martial case of Storekeeper Second Class Eddie A. Almejo, U.S. Navy, XXX XX 0817, the approved sentence to confinement for nine months, reduction to pay grade E-3, and a bad-conduct discharge, as partially suspended and promulgated in Commander, Navy Region Northwest, Silverdale, WA, General Court-Martial Order No. 11-05, dated 30 June 2005, has been finally affirmed in NMCCA No. 200501051.

In accordance with Article 58(a), UCMJ, and JAG Manual Section 0152, automatic reduction to pay grade E-1 is effected as of 30 June 2005.

Article 71(c), UCMJ having been complied with, the bad-conduct discharge will be executed.

s/ M.E. Brooks
M.E. BROOKS
Commander, U.S. Navy
Commanding Officer

APPENDIX F — NOTE TO 10 U.S.C. § 951

Offenses Against Minors

Pub. L. 105-119, Title T, § 115(a)(8)(C), Nov. 26, 1997, 111 Stat. 2466, provided that:

"(i) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice which encompass a range of conduct comparable to that described in section 17010(a)(3)(A) and (B) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)(3)(A) and (B)), and such other conduct as the Secretary deems appropriate for inclusion for purposes of this subparagraph.

"(ii) In relation to persons sentenced by a court martial for conduct in the categories specified under clause (i), the Secretary shall prescribe procedures and implement a system to—

> "(I) provide notice concerning the release from confinement or sentencing of such persons;
>
> "(II) inform such persons concerning registration obligations; and
>
> "(III) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

"(iii) The procedures and requirements established by the Secretary under this subparagraph shall, to the maximum extent practicable, be consistent with those specified for Federal offenders under the amendments made by subparagraphs (A) and (B).

"(iv) If a person within the scope of this subparagraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18, United States Code."

APPENDIX G — SECNAV INSTRUCTION 5800.14A, DEPARTMENT OF THE NAVY DATED MAY 24, 2005

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SFCNAVINST 5800.14A
PERS-68
24 May 05

SECNAV INSTRUCTION 5800.14A

From: Secretary of the Navy
To: All Ships and Stations

Subj: NOTICE OF RELEASE OF MILITARY OFFENDERS CONVICTED OF SEX OFFENSES OR CRIMES AGAINST MINORS

Ref: (a) 10 U.S.C. 951 (Section 115(a)(8)(C) of P.L. 105-119 of 26 Nov 97, 111 Stat 2466, reprinted as a note thereto)
(b) 42 U.S.C. 14071
(c) DOD Directive 1325.4 of 17 Aug 01
(d) DOD Instruction 1325.7 of 17 Jul 01

Encl: (1) List of Offenses Requiring Processing as a Convicted Sex Offender
(2) DD 2791 (APR 03), Notice of Release/ Acknowledgement of Convicted Sex Offender Registration Requirements

Appendix G

1. *Purpose*

a. To provide policy and guidance for management of the notification program for military offenders currently or previously adjudged at a general or special courts-martial, or convicted by a State, Federal, or foreign court of a sex offense or crime against a minor for which notification is required.

b. To designate those persons responsible for identifying offenders for whom sex offender notifications are required.

c. To perform notifications required by references (a) and (b).

2. *Cancellation.* SECNAVINST 5800.14.

3. *Discussion.* Sex offenders were previously required to register themselves with appropriate authorities in the locality where they chose to live. This requirement has been expanded to better meet the needs of the community. References (c) and (d) implement the requirements of references (a) and (b) to ensure registration and notification to State and local levels are made by the Services, not just the offender.

4. *Applicability.* This instruction applies throughout the Department of the Navy. It pertains to all Department of the Navy offenders who:

a. Have been adjudged, at any time, at a general or special courts-martial of a qualifying sex offense or crime against a minor as listed in enclosure (1).

b. Have a history of any State, Federal, or foreign conviction for a qualifying sex offense or crime against a minor for which notification is required.

5. *Policy.* The Department of the Navy will take steps necessary to register all offenders currently or previously adjudged at a general or special courts-martial, or previously convicted by a State, Federal, or foreign court of a sex offense or crime against a minor as required by references (a) through (d).

6. *Limitation.* No limitations are placed on the lawful prerogatives of the Department of the Navy or its officials.

7. *Responsibility*

a. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) is responsible for overall policy and execution of this notification program.

b. Commander, Navy Personnel Command (PERS-84) (Corrections and Programs Division) and Commandant of the Marine Corps (PSL Corrections) are assigned as "Component-Responsible Officials" and shall:

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(1) Develop and implement a notification program using a multi-disciplinary approach by judge advocates, corrections personnel, the Naval Criminal Investigative Service, and unit commanding officers.

(2) Establish procedures to ensure this notification program is in compliance with references (c) and (d).

(3) Establish a training program to ensure that service providers receive instruction in fulfilling the requirements for the Department of the Navy Notification Program.

(4) Establish an integrated and comprehensive system meeting the requirements of references (c) and (d).

(5) Coordinate provision of personnel in sufficient numbers to ensure that the program is effective.

b. The Component-Responsible Officials of this notification program for military offenders confined in their respective Service's correctional facilities shall:

(1) Ensure that prior to the permanent release from confinement of a prisoner, for whom sex offender notification is required, the correctional facility's commanding officer, officer in charge, chief petty officer in charge, or brig officer advise the prisoner of the registration requirements of the State in which the prisoner intends to reside upon release from confinement.

(2) Ensure that confinement facilities, through the use of enclosure (2), obtain the prisoner's acknowledgment in writing that the prisoner has been informed of the registration requirements. The notice, provided to the prisoner shall contain information that the prisoner is subject to a registration requirement as a sex offender in any State in which the prisoner resides, is employed, carries on a vocation, or is a student. The documentation shall be made a part of the prisoner's permanent file and the files maintained per current regulations.

(3) Ensure that before permanent release of a prisoner to a location inside the United States, for whom sex offender notification is required, the facility's commanding officer, officer in charge, chief petty officer in charge, or brig officer provide written notice of the release using enclosure (2) to the following:

(a) The chief law enforcement officer of the State in which the prisoner intends to reside upon release from confinement.

(b) The chief law enforcement officer of the local jurisdiction in which the prisoner intends to reside upon release from confinement.

(c) The State or local agency responsible for the receipt or maintenance of a sex offender registration in the State or local jurisdiction in which the prisoner intends to reside upon release from confinement.

(4) Ensure that before permanent release of a prisoner to a destination outside the United States, for whom sex offender notification is required, written notice of the offender's return to the community is provided using enclosure (2) per laws of the country of destination.

(5) Ensure enclosure (2) is used for making required notifications. The notice shall be provided in order to be received at least 5 days prior to the prisoner's permanent release from confinement. A prisoner's release date may not be extended due to failure of the confinement facility to complete required notifications prior to release.

(6) Ensure that upon transfer of a military prisoner, for whom sex offender notification is required, to a State or local confinement facility, or to a facility under the control of the Federal Bureau of Prisons, the Naval confinement facility provides written notification to the receiving confinement facility that the prisoner has been convicted. The receiving confinement facility will provide notice of release and inform the prisoner concerning registration obligations under the law. Notification to State and local officials is not required when prisoners are transferred to another correctional facility.

c. The Convening Authority or the Convening Authority's Designee shall:

(1) Ensure documentation of any sex offender registration or notification requirements for military

offenders adjudged at a special or general courts-martial are included in the Reports of Results of Trial.

(2) After completion of judicial proceedings at a general or special courts-martial, and upon post-trial confinement of military offenders, provide documentation (i.e., Reports of Results of Trial) to the designated confinement facility indicating any sex offender registration or notification requirement to be accomplished by the confinement facility as described in paragraph 7b above.

(3) (no later than one working day after completion of judicial proceedings at a special or general courts-martial, resulting in adjudgement of a qualifying sex offense or crime against a minor) provide the Reports of Results of Trial indicating any sex offender registration or notification requirement to be accomplished, and documentation of the offender's stated intended address of residence (specifying the city and State) to the Naval Criminal Investigative Service when those offenders:

(a) Are not sentenced to any confinement, or receive a sentence in which all confinement is suspended.

(b) Are not confined in a service-operated confinement facility.

(c) Are not or will not be, under control of the U.S. Probation Office or Federal Bureau of Prisons at the time of release from military service.

(4) Obtain the member's acknowledgment in writing that they were informed of the registration requirements.

(5) Immediately, upon completion of any post-trial action that would affect reporting requirements under references (a) through (d), including, for example, modification or disapproval of findings or sentence, provide notification to the Naval Criminal Investigative Service of such action.

d. The Naval Criminal Investigative Service, upon notification from a convening authority concerning those military offenders adjudged at a general or special courts-martial for whom sex offender notification is required, shall:

(1) Ensure required notifications are made in order to be received within 10 days of the completion of:

(a) Judicial proceedings for those offenders meeting conditions of paragraph 7c(3)(a) and (b).

(b) Any post-trial action described in paragraph 7c(5).

(2) Ensure enclosure (2) is used for making required notifications.

(3) Ensure written notice of an offender's return to the community is provided to

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(a) Officials outlined in paragraphs 7b(3)(a), 7b(3)(b), and 7b(3)(c) for offenders returning to a destination inside the United States.

(b) Officials outlined in paragraph 7b(4) for offenders returning to a destination outside the United States.

(4) Ensure prompt notification of all recipients of notifications that the previous notice is withdrawn in the event that notification of an offender's return to the community based on conviction for a sex offense or crime against a minor has been made, after which all such findings are disapproved in post-trial action described in paragraph 7(c)(5), and no conviction for a sex offense or crime against a minor is approved.

e. The Navy's Judge Advocate General shall provide advice, guidance, and assistance regarding the legal aspects of this notification program.

8. *Form.* DD 2791 (APR 03), Notice of Release/ Acknowledgment of Military Offender Convicted of Sex Offender Registration Requirements may be obtained from www.dtic.mil/whs/directives/infomgt/forms/ formsprogram.htm:

WILLIAM A. NAVAS, JR.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

Appendix G

LIST OF OFFENSES REQUIRING PROCESSING AS A CONVICTED SEX OFFENDER

Conviction of any of the following offenses punishable under the Uniform Code of Military Justice (UCMJ) shall require notification of State and local law enforcement agencies and provide information to inmates concerning sex offender registration requirements. For purposes of this instruction, conduct which is criminal only because of the age of the victim shall not be considered a triggering offense if the perpetrator was 18 years of age or younger when the offense was committed.

* * *

UCMJ Art	*DIBRS Code*	*Offense*
134	134-Y2	Conviction under Federal or assimilated State law for offenses or sexual violence, or of a sexual nature against or involving a minor, including the production, possession, or transmission of pornography that depicts a minor, or kidnapping a minor
80		Attempt (to commit any of the foregoing)
81		Conspiracy (to commit any of the foregoing)
82	082-A	Solicitation (to commit any of the foregoing)

APPENDIX H — CODE 20 NEWSMAILER 2006-15: NEW REQUIREMENT TO ADVISE THE ACCUSED REGARDING SEX OFFENDER REGISTRATION

EMAIL MEMORANDUM - PLEASE DISSEMINATE: NEWSMAILER CAN BE LOCATED ONLINE AT *http://www.nko.navy.mil/*

From: Deputy Assistant Judge Advocate General (Criminal Law)

To: All Navy and Marine Corps Judge Advocates

Subj: **CODE 20 NEWSMAILER 2006-15: NEW REQUIREMENT TO ADVISE THE ACCUSED REGARDING SEX OFFENDER REGISTRATION**

1. ***The Law***: On August 29, 2006, the United States Court of Appeals for the Armed Forces (CAAF) addressed mandatory sex offender registration and the duties of trial defense counsel in *United States v. Miller.* In *Miller*, CAAF found that trial defense counsel's failure to inform the accused of the mandatory sex offender registration requirement did not rise to ineffective assistance of counsel. Nonetheless, CAAF announced a new prospective rule that imparts new obligations upon all trial defense counsel and will influence how appellate courts analyze future ineffective assistance of counsel cases.

2. In his affidavit to the Court, the accused maintained that his trial defense counsel failed to advise him of the sex offender registration requirement and that the accused would not have plead guilty, if he had been so

informed. The accused's affidavit also detailed how his failure to register as a sex offender resulted in a state felony conviction and three years confinement in the Texas prison system.

3. ***The Rule***: The Court announced that "[i]n light of the federal statute, DoD Instr. 1325.7, and the state statutes requiring sex offender registration, we conclude that a prospective rule is appropriate to address the importance of trial defense counsel explaining the sex offender registration requirement to the accused." CAAF also established a timeline for when this new rule would take effect. "For all cases tried ninety-days the date of this opinion, trial defense counsel should inform an accused prior to trial as to any charge listed on the DoD Instr. 1325.7 Enclosure 27: Listing Of Offenses Requiring Sex Offender Processing." *Miller*, slip op. at 17. The Court also added that defense counsel should also indicate compliance with this new "advice requirement" on the record. *Id.*

4. ***Trial Tip***: Beginning immediately, all trial defense counsel should inform all applicable clients of the federal sex offender registration requirement for offenses listed in DoD Instr. 1325.7. As a measure of caution, trial defense counsel should also inquire into where their clients intend to reside upon release from military confinement and inform them of any corresponding state sexual offender laws. Trial counsel should ensure all PTAs include language acknowledging this advice and judges should consider inquiring during the providence inquiry to make the record.

* * * *

APPENDIX I — MEMORANDUM OF THE KITSAP COUNTY PROSECUTING ATTORNEY'S OFFICE DATED JUNE 7, 2005

Kitsap County Prosecuting Attorney's Office

MEMORANDUM

To:	Byron Holcomb
From:	Claire Bradley, Senior Deputy Prosecuting Attorney
Reply to:	Special Assault Unit
CC:	Steve Duckworth
Date:	June 7, 2005
Re:	Prosecutor's Position Regarding Sex Offender Registration for Eddie A. Almejo

Per our conversation, I have reviewed the documents that you have provided me regarding Mr. Almejo's conviction for Indecent Acts with a Minor under Article 134 section 1 of the UCMJ.

As the record currently reflects, Mr. Almejo has been convicted of a sex offense which requires registration as a sex offender under RCW 9A.44.130.

It is my position that Mr. Almejo must register as a sex offender immediately. If, however, your efforts to reverse his conviction are successful, Mr. Almejo's duty to register will immediately cease and his registration will be invalidated.

APPENDIX J — LETTER DATED MAY 26, 2005 RE: GENERAL COURT-MARTIAL ICO SK2 EDDIE A. ALMEJO, USN

DEPARTMENT OF THE NAVY

5800
Ser N00J/486
26 May 05

By facsimile to 206-842-8429
J. Bryon Holcomb
P.O. Box 10069
9596 Green Spot Place N.E.
Bainbridge Island, WA 98110

RE: GENERAL COURT-MARTIAL ICO SK2 EDDIE A. ALMEJO, USN

Dear Mr. Holcomb:

* * *

The third matter relates to registration as a sexual offender by a state jurisdiction. This issue is beyond the control of a military Convening Authority and was not part of any Agreement with the Convening Authority or the government in this case. This matter is governed solely by any applicable state law. Military law does not apply. Federal law does not apply. This is a state matter. This is an issue between you, your client, and the applicable state jurisdiction. This important issue is usually thoroughly reviewed as part of any attorney-client relationship where there are matters that could

potentially be subject to sexual offender registration laws. A copy of the record of trial can be provided to state authorities if desired or requested.

* * *

Sincerely,

s/ D.L. Dwigans
D.L. DWIGANS
Commander, U.S. Navy
Staff Judge Advocate

APPENDIX K — LETTER FROM THE DEPARTMENT OF THE NAVY RE: PUNITIVE DISCHARGE FROM ACTIVE DUTY DATED OCTOBER 30, 2007

DEPARTMENT OF NAVY
NAVY AND MARINE CORPS APPELLATE LEAVE ACTIVITY
1325 10TH STREET SE
WASHINGTON NAVY YARD, DC 20374-5070

October 30, 2007

From: Commanding Officer, Navy and Marine Corps Appellate Leave Activity, Washington, DC

To: Eddie Alfredo Almejo

Subj: PUNITIVE DISCHARGE FROM ACTIVE DUTY

Ref: (a) Manual for Courts-Martial, 2005 Edition
(b) BUPERSINST 1750.10B

Encl.: (1) Supplemental Court-Martial Order
(2) DD-214 (Certificate of Release/Discharge From Active Duty)
(3) Return Envelope for ID Card

1. Under reference (a), appellate review of your case is complete. Enclosure (1) directs your separation from active duty. Enclosure (2) is your discharge certificate.

Appendix K

2. Your final discharge from the Navy was affected on OCT 30 2007. Accordingly, you are required by Federal Law to complete the following actions. Failure to comply with these requirements could result in prosecution:

(a) Under reference (b), you are no longer entitled to an Armed Forces Identification Card. Return your ID card along with any dependent ID card(s) to this command utilizing enclosure (3).

(b) You are no longer authorized access to any military base. Additionally, your privileges to use military medical/dental care, the exchange system and educational programs were terminated effective your discharge date.

(c) Household goods shipment (for personnel with dependents) may be arranged through the nearest Traffic Management Office (TMO).

(d) For information concerning your final pay account settlement, you should contact the Defense Finance Accounting Service (DFAS) at 1-888-729-2769 after 90 days after your final discharge date.

(e) For further information pertaining to your rights and/or benefits, you should contact your local Bureau of Veteran Affairs.

3. Point of contact at this command is PS2 (SW/AW) Crane at (202) 685-0111.

s/ P.W. Steketee
By direction

APPENDIX L — DEPARTMENT OF DEFENSE INSTRUCTIONS

DODI 1325.7, July 17, 2001

6.18 *Release Procedures*

6.18.1. Commanders of correctional facilities shall ensure that DD Form 2708, "Receipt For Inmate or Detained Person" (enclosure 4), or comparable documentation is prepared and maintained to reflect that a prisoner has been taken out of a correctional facility for any reason.

6.18.2. Commanders of correctional facilities shall ensure that DD Form 2717, "Department of Defense Voluntary/Involuntary Appellate Leave Action" (enclosure 21), or comparable documentation is prepared and maintained when a prisoner with an unexecuted punitive discharge is released from confinement.

6.18.3. Commanders of correctional facilities shall ensure that DD Form 2718, "Inmate's Release Order" (enclosure 22), or comparable documentation is prepared and maintained upon each prisoner's final release from the facility.

6.18.4. Facility commanders shall not release a prisoner whose sentence has been set aside by the decision of an appellate court until such release is specifically directed by The Judge Advocate General of the prisoner's Service or other competent authority.

Appendix L

6.18.5. Notice to prisoners subject to sex offender registration requirements.

6.18.5.1. Before final release from confinement, DoD correctional facility commanders will advise prisoners convicted of an offense requiring registration as a sex offender (see enclosure 27 for a list of covered offenses) of the registration requirements of the State in which the prisoner will reside upon release from confinement. The notice provided to a prisoner shall contain information that the prisoner is subject to a registration requirement as a sex offender in any State in which the person resides, is employed, carries on a vocation, or is a student.

6.18.5.2. Confinement facilities shall obtain the prisoner's acknowledgement in writing that the prisoner was informed of the registration requirements using *DD Form 2791, "Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements" (enclosure 28)*, or equivalent. The documentation shall be made part of the prisoner's permanent file and maintained by the prisoner's branch of Service according to policies and regulations prescribed by the Secretary of the Military Department concerned.

6.18.5.3. Facility commanders shall ensure that all available records concerning an inmate are reviewed upon entering the facility to determine if the prisoner has been convicted of a sexually violent offense or criminal offense against a victim who is a minor. The notice requirements described in subparagraph 6.18.5.1.

apply to prisoners who were convicted of a covered offense at any time prior to beginning serving the current term of confinement.

6.18.6. Release Notification to State and Local Law Enforcement Officials.

6.18.6.1. Before release of prisoners convicted of sexually violent offenses or criminal offenses against a victim who is a minor (see enclosure 27 for list of covered offenses), facility commanders shall provide written notice of the release to the chief law enforcement officer of the State; the chief law enforcement officer of the local jurisdiction in which the prisoner will reside; and to the State or local agency responsible for the receipt or maintenance of a sex offender registration in the State or local jurisdiction in which the person will reside. Facility commanders shall ensure that all available records concerning an inmate are reviewed to determine if the prisoner to be released has been convicted of a covered sexually violent offense or criminal offense against a victim who is a minor.

6.18.6.1.1. The chief law enforcement officer of the local jurisdiction is the appropriate municipal or county law enforcement agent with jurisdictional authority consistent with the inmate's release address. When multiple jurisdictions have overlapping authority, the more geographically specific agency should be notified. Facility commanders may refer to the Director of Law Enforcement Administrators to identify appropriate State and local chief law enforcement officers.

6.18.6.1.2. The written notice provided pursuant to subparagraph 6.18.6.1. shall include the place where the prisoner intends to reside and information that the prisoner shall be subject to registration. The notice shall also include the criminal history including a description of the offense of which the prisoner was convicted and any restrictions or conditions of release.

6.18.6.1.3. Notice shall be provided at least 5 days before release date if the expected place of residence following release is known to the confinement facility.

6.18.6.1.4. The Secretaries of the Military Departments will establish a system to verify that required notifications have been made for prisoners, military members whose sentences do not include confinement, and those members who were sentenced to confinement but are no longer confined.

6.18.6.1.5. Notice about a subsequent change of residence by a prisoner falling within this subsection during any period of supervised release or parole shall also be provided to the agencies and officers specified in subparagraph 6.18.6.1. In the case of parolees falling under supervision of the U.S. Parole Commission, the notice of changes in parolee residence while on parole shall be made by the U.S. Parole Commission.

6.18.6.1.6. Notification to State officials is not required for prisoners transferred to another correctional facility. However, upon the transfer of a military prisoner who is subject to this paragraph to a

facility under the control of the FBOP, the Military Service of the prisoner concerned shall provide written notification to the FBOP that the prisoner has been convicted of a sexually violent offense or an offense against a victim who is a minor. If a military prisoner remains confined in a facility under the control of the FBOP until the time of release, the FBOP shall provide notice of release and inform the prisoner concerning registration obligations.

APPENDIX M — NOTICE OF RELEASE/ ACKNOWLEDGEMENT OF CONVICTED SEX OFFENDER REGISTRATION REQUIREMENTS DATED MAY 6, 2005

NOTICE OF RELEASE/ACKNOWLEDGEMENT OF CONVICTED SEX OFFENDER REGISTRATION REQUIREMENTS

1. TO | X | STATE LAW ENFORCEMENT | | LOCAL LAW ENFORCEMENT | | STATE SEX OFFENDER REGISTRATION OFFICIAL

a. ADDRESS (Include ZIP Code): ATTORNEY GENERAL, 1125 WASHINGTON ST SE, OLYMPIA, WA 98504

b. DATE (YYYYMMDD): 20050506

Pursuant to 10 U.S.C. 951 (Note) and DODI 1325.7, paragraph 6.18.5, the Department of Defense is notifying your office of the release of an offender who, based on available information, was convicted of a sex offense or a crime against a victim who was a minor. The offender is subject to sex offender registration under Federal law. For additional information, please contact the point of contact with facility of release who is identified below.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 951 (Note); DODI 1325.7, paragraph 6.18.5, and E.O. 9397.
PRINCIPAL PURPOSE(S): To notify an offender of the requirement to register upon release from confinement or military service with the state authorities as a sex offender, to record the offender's acknowledgement of receiving notice of and information pertaining to the requirement, and to obtain an offender's expected place of residence following release.
ROUTINE USE(S): To State and local law enforcement authorities for purposes of notification that a sex offender will be residing in a local community and to State or local officials for purposes of registering the individual as a sex offender.
DISCLOSURE: Voluntary; however, failure to provide an expected place of residency may result in denial of your request for parole or delay your release from confinement or military service.

2. NAME OF OFFENDER (Last, First, Middle Initial): ALMEJO, EDDIE, A.

3. DATE OF BIRTH (YYYYMMDD): 1976-01-26

4. SOCIAL SECURITY NUMBER: 549-41-0817

5. CURRENT AND PRIOR CRIMINAL HISTORY OF SEXUAL OFFENSE(S)

a. SPECIFIC OFFENSE TITLE AND DESCRIPTION (If needed, list on separate sheet)	b. DATE OF CONVICTION (YYYYMMDD)	c. PLACE OF CONVICTION
Uniform Code of Military Justice		
ARTICLE 134-R1 - INDECENT ACT WITH A MINOR	20041220	HANOOR, WA

6. FINAL RELEASE DATE (YYYYMMDD): 20050919

7. RELEASE CONDITIONS OR RESTRICTIONS: Must check in with the Greene County Sheriff Dept for registration requirements.

8. OFFENDER'S ACKNOWLEDGEMENT OF SEX OFFENDER REGISTRATION REQUIREMENTS

I, ALMEJO, EDDIE, A. (Last Name - First, Middle), E-3 (Rank), USN (Service), 549-41-0817 (Social Security Number), was convicted and sentenced for the commission of [X] a sexual offense [ ] sexual offenses [X] an offense involving a ≤16 year old victim.

I have been informed that I will be released from confinement or military service on or about: 20050511 (YYYYMMDD).

I certify that upon release from confinement or military service I will reside at the following address: 11263 SW FRY AVE, PORT ORCHARD, WA 98367 (Street, Apartment Number, City, State and ZIP Code)

I hereby acknowledge that I was informed that upon my release from confinement or military service, I am subject to registration requirements as a sex offender in any State or U.S. territory in which I will reside, be employed, carry on a vocation, or be a student. I was further informed that the chief local law enforcement officer of the jurisdiction in which I will reside upon release from confinement or military service is being provided written notice of the date of my release from confinement or military service, the offense(s) of which I was convicted, and that I am subject to a registration requirement as a sex offender. This notice will also be submitted to state law enforcement and sex offender officials. I understand that I must contact the office that follows, to ensure that sex offender registration requirements are met: KITSAP COUNTY SHERIFFS OFFICE,614 DIVISION,PORT ORCHARD WA 98366 (Organization, Address (Include ZIP Code), and Telephone Number) (360)337-7101

I acknowledge that I was informed that every change in my address must be reported in the manner provided by State law. I also acknowledge being informed that if I move to another state, I must report the change of address to the responsible agency in the state I am leaving, and comply with the registration requirements in the new state of residence. I understand that the failure to register may constitute grounds to revoke parole. Finally, I understand that if I fail to register and/or change or update such registration information as required under a State sex offender registration program, I may be subject to criminal prosecution.

Signed on this 06 day of MAY, 2005

WITNESS: (Signed Name) (Printed Name): PATRICK E. LORDI

OFFENDER: (Signed Name) (Printed Name): EDDIE A. ALMEJO

9. CONFINEMENT FACILITY OR COMMAND RELEASING OFFENDER

a. NAME OF FACILITY OR COMMAND: Naval Consolidated Brig, Miramar

b. ADDRESS (Include ZIP Code): PO BOX 452135, SAN DIEGO, CA 92145-2135

10. CONFINEMENT FACILITY OR COMMAND POINT OF CONTACT

a. NAME (Last, First, Middle Initial): Lordi, Patrick, E. / patrick.lordi@navy.mil

b. ADDRESS (Include ZIP Code): PO BOX 452135, SAN DIEGO, CA 92145-2135

c. TELEPHONE NUMBER (Include Area Code): (858) 577-7065

11. CONFINEMENT FACILITY COMMANDER OR COMMANDER RELEASING OFFENDER

a. TYPED NAME (Last, First, Middle Initial): NEWBOLD, P.G. / BYDIRCO

b. SIGNATURE

c. DATE SIGNED (YYYYMMDD): 20050506

In the event you are not the law enforcement agency with jurisdiction authority consistent with the offender's release address, please forward these documents to the appropriate authority.

DD FORM 2791, APR 2003 — REPLACES PREVIOUS EDITION AND DD FORM 2791-1, WHICH ARE OBSOLETE.

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BEST AVAILABLE COPY